

EXHIBIT C



U.S. Department of Justice

*United States Attorney
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September 12, 2006

John T. Montgomery
Ropes & Gray
One International Place
Boston MA 02110-2624

Re: In re Pharmaceutical Industry Average Wholesale Price Litigation,
MDL No. 1456 (D. Mass.)

Dear Mr. Montgomery:

On behalf of the Department of Health and Human Services (HHS), I am responding to your letter of August 31, 2006, in which you set forth the Track 1 Defendants' position that the HHS Touhy regulations do not apply to the MDL proceedings.


Your position is meritless. The fact that the United States is a plaintiff in a case that has been transferred to MDL No. 1456 does not make the United States a "party" to any of the class action cases, including the Track 1 case scheduled for trial in November. The transfer of the government's case to MDL 1456 was for pretrial purposes only. The United States moved to appear in the MDL as an "interested party" solely to facilitate electronic filing of documents, as the motion indicates. Judge Saris has already indicated her view that the United States is not a party to the Track 1 class action cases and that the Touhy regulations apply. *See* August 3, 2006, Status Conference Hearing Transcript at 18:15 - 20:2.

If the Track 1 Defendants seek the testimony of a present or former government employee concerning information acquired in the course of performing official duties or because of the person's official relationship with the Department, then the Defendants must comply with the Department's regulations at 45 C.F.R. § 2 et seq. Any request for testimony "must be addressed to the Agency head in writing and must state the nature of the

John T. Montgomery
September 12, 2006
Page 2

requested testimony, why the information sought is unavailable by any other means, and the reasons why the testimony would be in the interest of [HHS] or the federal government.” 45 C.F.R. § 2.4.

Sincerely,



George B. Henderson, II
Assistant U.S. Attorney

cc: Gejaa T. Gobena
Carol Bennett